

FINDINGS OF FACT

1. On the date of the preliminary hearing, March 28, 2000, claimant had been employed by the respondent for eight years.
2. Claimant works as a cardiovascular technician in the Cardiovascular Patient Services Department.
3. During the week of November 8, 1999, claimant testified she was required on several occasions to help lift a large obese patient, who weighed 350 to 400 pounds.
4. Finally, on Friday, November 12, 1999, after one of the lifting incidents, claimant felt a burning sensation and experienced fatigue in her low back.
5. At that time, claimant told the charge nurse on her shift about her low-back symptoms. Thereafter, claimant was not required to help lift the patient because of her symptoms.

Claimant also testified that sometime during the following week she discussed her low-back problems with two of her supervisors, Debra Feekes, clinical coordinator, and Donna Dole, clinical director.

6. On Sunday, two days after the lifting incident at work, claimant testified that she was at her niece and nephew's home and bent over to pick up a piece of Kleenex, and she experienced a sharp pain in her low back that was so severe it brought her to her knees.
7. Claimant sought medical treatment on her own for her low-back condition with her family physician, Edward J. Weippert, M.D. On November 17, 1999, she was seen by Ronald J. Reichenberger, M.D., because Dr. Weippert was not available.
8. Dr. Reichenberger diagnosed claimant with low-back pain, prescribed pain medication, and stretching exercises. He gave claimant a return-to-work slip with work restrictions of no lifting of over 15 pounds, no repetitive bending, and no prolonged standing.

Although claimant testified she told Dr. Reichenberger about the specific lifting incident at work, Dr. Reichenberger's medical record indicates claimant did not believe her low-back pain was work-related but claimant does do a lot of lifting at work.

9. Claimant attempted to return to work. But had another severe episode with her back as she bent over to obtain a chart. She was sent home by Donna Dole, the clinical director.
10. On November 24, 1999, claimant was again seen for low-back pain, this time with her family physician, Dr. Weippert. Dr. Weippert noted that claimant gave a history of

performing a lot of lifting of patients at work that developed fatigue in her back. Claimant then experienced an acute spasm when she reached down to pick up some Kleenex.

Dr. Weippert continued claimant's stretching exercises and pain medication. Claimant was to return for a follow-up visit if she still was having pain.

11. Because claimant did not improve, Dr. Weippert referred her to orthopedic surgeon Duane A. Murphy, M.D. Dr. Murphy had treated claimant some years ago for lower extremities injuries. Dr. Murphy first saw claimant on February 16, 2000. Although Dr. Murphy's medical report indicated an October 1999 date, he reported that claimant provided him with a history of lifting a 300-pound patient at work and then developing a tiredness in her back from the lifting. Two days later, claimant developed significant low-back pain when she bent over to pick up a piece of paper.

Dr. Murphy diagnosed claimant with an aggravation of pre-existing degenerative changes at L4-5. He recommended that claimant participate in respondent's back rehabilitation program. He also prescribed a new medication for claimant to take for her pain and discomfort.

12. Claimant completed and signed applications for both the Family Medical Leave Act and short term disability benefits. Both applications asked whether or not her injury was related to her work. On both applications she marked no.

Claimant testified she marked no on the applications because she was afraid she would have a problem proving her low back was injured at work because the severe symptoms occurred away from work. Also, claimant testified she was out of sick leave and she needed the money from the short term disability benefits. Additionally, claimant testified she first left the work injury question blank, but after she had a conversation with her supervisor, Debra Feekes, she advised claimant to go ahead and mark no on the work injury question or claimant would not receive any benefits.

13. Donna Dole, clinical director for the cardiovascular department, testified on behalf of the respondent. She verified that claimant had not been at work on Friday, November 12, 1999. Claimant had called in sick that particular day. Ms. Dole also testified she had been advised that during the work week commencing November 8, 1999, there had been a problem with an obese patient that required a number of employees on the floor to assist the patient. But Ms. Dole did not know the specific names of those employees or if claimant was one of the employees.

Additionally, Ms. Dole recalled seeing claimant in terrific pain at work on Tuesday, November 16, 1999. Ms. Dole asked claimant if she had injured her back, and claimant responded, "in all honesty, I do not know."

14. Dr. Murphy's medical records were admitted into evidence at the preliminary hearing and indicated claimant was treated for an injury to her right knee in 1990. At that time, the records indicated claimant also had some low-back complaints. But the medical records do not show claimant needed any further treatment for low-back complaints since 1990.

CONCLUSIONS OF LAW

1. The claimant has the burden of proving his or her right to an award of compensation and of proving the various conditions on which that right depends.¹

2. At this point in the proceedings, the Appeals Board acknowledges that claimant's case is complicated by the fact that she indicated on her applications for both the Family Medical Leave Act and short term disability benefits that her injury was not related to her work. But the Appeals Board finds where there is conflicting testimony and other conflicting evidence contained in the record, it is significant that the Administrative Law Judge had the opportunity to judge the credibility of the witnesses. Finding claimant proved she injured her low back at work while lifting an obese patient through November 11, 1999, the Administrative Law Judge had to believe claimant's testimony. The Appeals Board finds, as it has in the past, that some deference should be given to the Administrative Law Judge's conclusions because he had the opportunity to assess the credibility of the witnesses. Therefore, the Appeals Board, at this juncture of the proceedings, concludes the Administrative Law Judge's preliminary hearing Order should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's March 28, 2000, preliminary hearing Order should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

c: Phillip R. Fields, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark , Administrative Law Judge
Philip S. Harness, Director

¹See K.S.A. 1999 Supp. 44-501(a).